

ORDER SETTING BENCH TRIAL, FINAL PRETRIAL CONFERENCE, AND REQUIREMENTS FOR THE PROPOSED FINAL PRETRIAL ORDER

***IT IS ORDERED:*¹**

I. TRIAL DATE: This case has been placed on the calendar of United States District Court Chief Judge Mark W. Bennett for a bench trial scheduled to commence [in the third floor district courtroom of the Federal Courthouse in Sioux City,][in the third floor courtroom in the Federal Building and Post Office in Fort Dodge,] Iowa, during the two-week period beginning on the **^C day of ^C, 200^C**.

II. CONTINUANCE OF TRIAL OR FINAL PRETRIAL CONFERENCE DATES: Unless requested within **14 days** after the date of this order, no continuance of the trial date will be granted except upon written application and for exceptional cause.

III. FINAL PRETRIAL CONFERENCE: A final pretrial conference (“FPTC”) is scheduled before United States Magistrate Judge Paul A. Zoss on the **^C day of ^C, 200^C**. [*Approximately two weeks before trial.*] The FPTC will be held in person at the U.S. Courthouse in Sioux City, Iowa, unless the parties agree in advance to a telephonic FPTC and so notify Judge Zoss at least **2 court days** before the FPTC. If the FPTC is being held by telephone, the court will initiate the conference call, but the parties must advise the court of the contact numbers for each party and counsel who will participate in a telephonic FPTC at least **one court day** before the FPTC.

IV. FINAL PRETRIAL ORDER: The parties are jointly responsible for the preparation of the proposed Final Pretrial Order. Before the FPTC, pro se parties and counsel for represented parties must prepare, agree upon, and sign a proposed Final Pretrial Order prepared for Judge Zoss’s signature in the format attached to this order. A copy of

¹This Order was revised on October 10, 2002. The parties are alerted to the fact that their duties and responsibilities have changed from what was required by earlier trial setting orders.

the proposed order must be received by Judge Zoss (via mail, facsimile, e-mail,² or hand-delivery, but not filed) at least **2 court days** before the FPTC.

V. WITNESS AND EXHIBIT LISTS: Exhibit lists must be attached to, and witness lists must be included as part of, the proposed Final Pretrial Order, in accordance with the instructions in the attached form order. The parties are not required to list rebuttal witnesses or impeachment exhibits. Proposed witness and exhibit lists must be exchanged by the parties (but not filed) at least **21 days** before the FPTC. At the time the parties exchange their exhibit lists, they also must give written notice to all adverse parties of any intent to use a declaration under Federal Rules of Evidence 803(6), 902(11), or 902(12) to establish foundation for records of regularly conducted activities, and must immediately thereafter make the records and the declaration available for inspection.

VI. EXHIBITS: Exhibits must be prepared for trial in accordance with the following instructions:

A. *Marking of Exhibits.* All exhibits must be marked by the parties before trial. The plaintiff(s) should use numbers and the defendant(s) should use letters, unless prior approval is obtained from Judge Zoss for a different exhibit identification scheme. (For example, the parties may want to obtain approval to utilize a sequential numbering system related to the numbering of exhibits as they were numbered in discovery.) Exhibits also must be marked with the case number. ***All exhibits longer than one page must contain page numbers at the bottom of each page.***

B. *Elimination of Duplicates.* The parties should compare the exhibits and eliminate duplicates. If more than one party wants to offer the same exhibit, then it should be marked with a number and listed as a joint exhibit on the exhibit list of the plaintiff(s).

C. *Listing of Exhibits and Objections.* Exhibits must be listed separately, unless leave of court is granted for a group exhibit. If a party objects to parts of an exhibit but not to other parts, the offering party must prepare separate versions of the

²paul_zoss@iand.uscourts.gov

exhibit, one that includes the parts to which objections are being asserted and the other that redacts those parts.

D. Copies for the Court. Before trial, each party must supply Chief Judge Bennett with a copy of all exhibits to be used at trial. The court's copies of exhibits should be placed in a ringed binder with a copy of the exhibit list at the front and with each exhibit tabbed. The parties must supply the Clerk of Court with a second set of exhibits, also tabbed and in a ringed binder, to be used as the original trial exhibits in the official records of the court.

Copies of all exhibits as to which there may be objections must be brought to the FPTC. If an exhibit is not brought to the FPTC and an objection to the exhibit is asserted at the FPTC, the exhibit may be excluded from evidence for noncompliance with this order.

VII. TRIAL BRIEFS: If the trial of the case will involve significant issues not adequately addressed by the parties in connection with dispositive motions or other pretrial motions, the parties must prepare trial briefs addressing such issues. At or before the FPTC, the parties must serve copies of their trial briefs on all other parties, and file an original and 2 copies with the Clerk of Court.

VIII. PROTOCOL FOR WITNESSES: A attorney who may call a witness to testify at trial must, before the witness testifies, advise the witness of the accepted protocol for witnesses testifying in this court. This advice should include the following information: (A) the location of the witness box; (B) the proper route from the courtroom door to the witness box;³ (C) the fact that the witness will be placed under oath; (D) where the witness should stand while the oath is being administered; (E) that the witness should adjust the witness chair and the microphone so the microphone is close to and directly in front of the witness's mouth; (F) that the witness should speak only in response to a question; (G) that the witness should wait for a ruling on any objections before proceeding to answer a

³A map displaying this route is attached to this order. A copy of this map should be provided to each witness who is unfamiliar with the layout of the courtroom by the attorney calling the witness to testify.

question; (H) that the witness should answer all questions verbally; and (I) that substances such as food, beverages, and chewing gum should not be brought into the courtroom.

The attorney also must advise the witness of proper dress for the courtroom. Proper dress does not include blue jeans, shorts, overalls, T-shirts, collarless shirts, shirts with printed words or phrases on the front or back, tank tops, or the like.

IX. RESTRICTIONS ON WITNESSES:

A. Exclusion of Witnesses. A witness who may testify at the trial or at an evidentiary hearing shall not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial or hearing until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or unless the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial or hearing until after the witness has completed his or her testimony at the trial or evidentiary hearing, unless the court orders otherwise.

B. Restrictions on Communications with Witnesses. Unless the court orders otherwise, after the commencement of the trial or an evidentiary hearing and until the conclusion of the trial or hearing, a witness who may testify at the trial or hearing is prohibited from communicating with anyone about what has occurred in the courtroom during the trial or hearing. If the witness does testify at the trial or hearing, after the witness is tendered for cross-examination and until the conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

C. Duties of Counsel. An attorney who may call a witness to testify at the trial or evidentiary hearing must, before the trial or hearing, advise the witness of these restrictions.

D. Parties. These restrictions do not apply to the parties.

X. TESTIMONY BY DEPOSITION: With respect to any witness who will appear by deposition, at least **21 days** before trial, the party intending to offer the deposition must serve on the opposing parties a written designation, by page and line number, of those

portions of the deposition the offering party intends to submit into the record. At least **14 days** before trial, each opposing party must serve on the offering party any objections to the designated testimony and a counter-designation, by page and line number, of any additional portions of the deposition which the opposing party intends to submit into the record. At least **one week** before trial, the party offering the deposition must serve upon the opposing parties any objections to the designated testimony and a written designation, by page and line number, of any additional portions of the deposition the offering party intends to submit into the record. At least **4 court days** before trial, the parties must consult, either personally or by telephone, and attempt to resolve any objections to the proposed deposition testimony.

At least **3 court days** before the commencement of trial, the party intending to offer the deposition testimony must provide Chief Judge Bennett with a copy of the deposition, with the parts of the deposition to be included in the record clearly indicated on the deposition, together with a statement listing all unresolved objections. Chief Judge Bennett will review any objections, listen to any arguments, and make any necessary rulings. The court also will expect the parties to edit any video deposition accordingly.

All references in depositions to exhibit numbers or letters must be changed to correspond to the exhibit designation for trial.

XI. MOTIONS IN LIMINE: The parties are required to notify the court by motion in limine or by motion under Federal Rule of Evidence 104(a) of any novel, unusual, or complex legal, factual, or procedural issues reasonably anticipated to arise at trial. All such motions must be served and filed at least **14 days** before the FPTC. Resistances to such motions must be served and filed within **one week** after service of the motion.

XII. OPENING STATEMENTS; CLOSING ARGUMENTS: Opening statements are limited to **30 minutes** and closing arguments are limited to **one hour**. **A request for**

additional time for opening statements or closing arguments must be made no later than the commencement of trial.

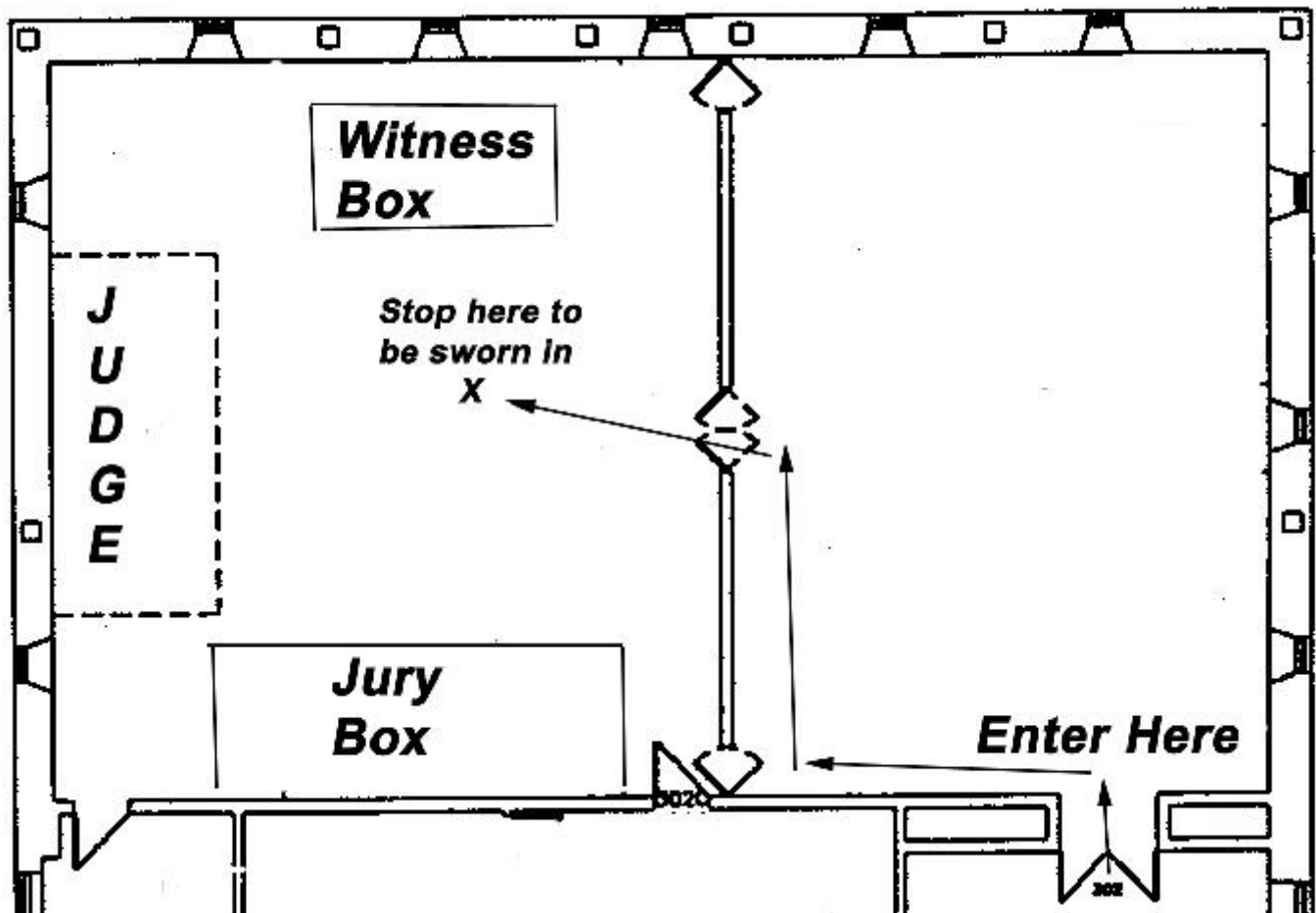
XIII. SETTLEMENT CONFERENCE: Any party desiring a settlement conference should contact Judge Zoss in Sioux City, Iowa, 712/233-3921, at the earliest opportunity. Such contact may be ex parte for the sole purpose of requesting a settlement conference. A settlement conference will be scheduled with a judge who will not be involved in trying the case.

IT IS SO ORDERED.

DATED October 15, 2002.

MARK W. BENNETT
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

MAP OF THE THIRD-FLOOR COURTROOM
FEDERAL BUILDING, SIOUX CITY, IOWA



UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF IOWA
_____ DIVISION

[INSERT PARTIES AND CASE NUMBER]

**FINAL PRETRIAL
ORDER
(PROPOSED)**

[NOTE: Instructions for preparing this form appear in brackets and should not be reproduced in the proposed Final Pretrial Order. All material not appearing in brackets should be reproduced in the proposed Final Pretrial Order.]

This final pretrial order was entered after a final pretrial conference held on [date]. The court expects the parties to comply fully with this order. ***[Full compliance with the order will assist the parties in preparation for trial, shorten the length of trial, and improve the quality of the trial. Full compliance with this order also will help “secure the just, speedy, and inexpensive determination” of the case. Fed. R. Civ. P. 1.]***

The following counsel, who will try the case, appeared at the conference:

1. For plaintiff(s):
Name(s)
Street Number, Street Name and/or Box Number
City, State and Zip Code
Phone Number [include area code]
Facsimile Number [include area code]
E-mail address [if available]

2. For defendant(s):
Name(s)
Street Number, Street Name and/or Box Number
City, State and Zip Code
Phone Number [include area code]
Facsimile Number [include area code]
E-mail address [if available]

I. STIPULATION OF FACTS: The parties agree that the following facts are true and undisputed:*[The parties are to recite all material facts as to which there is no dispute. Special consideration should be given to such things, for example, as life and work expectancy, medical and hospital bills, funeral expenses, cause of death, lost wages, back pay, the economic value of fringe benefits, and property damage. The parties should stipulate to an undisputed fact even if the legal relevance of the stipulated fact is questioned by one or more party, but in such instances the stipulated fact should be followed by an identification of the objecting party and the objection (e.g. "Plaintiff objects to relevance.")]*

- A.
- B.

II. EXHIBIT LIST: The parties' exhibit lists are attached to this Order.*[The parties are to **attach to this order** (not include in the body of the order) exhibit lists that list all exhibits (except for impeachment exhibits) each party intends to offer into evidence at trial. Exhibit lists are to be prepared in the attached format, indicating objections using the categories described in the form.*

*All exhibits are to be made available to opposing counsel for inspection at least **twenty-one days** before the date of the FPTC. Failure to provide an exhibit for inspection constitutes a valid ground for objection to the exhibit, and should be noted on the exhibit list.*

Copies of all exhibits as to which there may be objections must be brought to the FPTC. If an exhibit is not brought to the FPTC and an objection is asserted to the exhibit at the FPTC, the exhibit may be excluded from evidence by the court. Any exhibit not listed on the attached exhibit list is subject to exclusion at trial. The court may deem any objection not stated on the attached exhibit list as waived.]

III. WITNESS LIST: The parties intend to call the following witnesses at trial:*[Each party must prepare a witness list that includes all witnesses (except for rebuttal witnesses) whom the party intends to call to testify at trial. The parties are to exchange their separate witness lists at least **twenty-one days** before the date of the FPTC. The witness lists are to*

be included in the following format. A witness testifying by deposition must be listed in the witness list with a designation that the testimony will be by deposition.]

- A. Plaintiff(s) witnesses [*list name, **substance of testimony**, whether any party objects to the witness, and the nature of and grounds for any objection*]:
 - 1.
 - 2.
- B. Defendant(s) witnesses [*list name, **substance of testimony**, whether any party objects to the witness, and the nature of and grounds for any objection*]:
 - 1.
 - 2.

All parties are free to call any witness listed by an opposing party. A party listing a witness guarantees his or her presence at trial unless it is indicated otherwise on the witness list. ***Any objection to the offer of testimony from a witness on the witness list is waived if it is not stated on this list.***

IV. RESTRICTIONS ON WITNESSES: A witness who may testify at the trial shall not be permitted to hear the testimony of any other witnesses before testifying, and is excluded from the courtroom during the trial until after the witness has completed his or her testimony, unless exclusion of the witness is not authorized by Federal Rule of Evidence 615 or the court orders otherwise. A witness who is excluded from the courtroom pursuant to this paragraph also is prohibited from reviewing a verbatim record of the testimony of other witnesses at the trial until after the witness has completed his or her testimony, unless the court orders otherwise.

Unless the court orders otherwise, after the commencement of trial and until its conclusion, a witness who may testify at the trial is prohibited from communicating with anyone about what has occurred in the courtroom during the trial. If the witness does testify at the trial, after the witness is tendered for cross-examination and until the conclusion of the witness's testimony, the witness is prohibited from communicating with anyone about the subject matter of the witness's testimony. A witness may, however, communicate with his or her attorney about matters of privilege, and may communicate with anyone if the right to do so is guaranteed by the United States Constitution.

These prohibitions do not apply to the parties. An attorney who may call a witness to testify at trial must, before the trial, advise the witness of these restrictions.

V. EVIDENTIARY AND OTHER LEGAL ISSUES:

A. Plaintiff(s) Issues:

- 1.
- 2.

B. Defendant(s) Issues:

- 1.
- 2.

[The parties must list all unusual evidentiary and legal issues which are likely to arise at trial, including such things as disputes concerning the admissibility of evidence or testimony under the Federal Rules of Evidence; the elements of a cause of action; whether recovery is barred as a matter of law by a particular defense; disputes concerning the measure, elements, or recovery of damages; and whether the Statute of Frauds or the Parol Evidence Rule will be raised. The purpose of this listing of issues is to advise the court in advance of issues and problems that might arise at trial.]

VI. COURTROOM TECHNOLOGY: Prior to trial, attorneys and witnesses who intend to utilize the technology available in the courtroom must familiarize themselves with the proper manner of operation of the equipment. Instruction and training on the proper use of the equipment may be obtained from Rick Hunt or Sue Young of the court's automation staff by calling 712-233-3845 or 3844 to schedule an appointment. Information also may be obtained from the court's website at the following web address: www.iand.uscourts.gov.

VII. OPENING STATEMENTS; CLOSING ARGUMENTS: Opening statements are limited to **30 minutes** and closing arguments are limited to **one hour**. **A request for additional time for opening statements or closing arguments must be made no later than the commencement of trial.**

VIII. PROTOCOL FOR WITNESSES: An attorney who may call a witness to testify at trial must, before the witness testifies, advise the witness of the accepted protocol for witnesses testifying in this court. This advice should include the following information: (A) the location of the witness box; (B) the proper route from the courtroom door to the witness box; (C) the fact that the witness will be placed under oath; (D) where the witness should stand while the oath is being administered; (E) that the witness should adjust the witness chair and the microphone so the microphone is close to and directly in front of the witness's mouth; (F) that the witness should speak only in response to a question; (G) that the witness should wait for a ruling on any objections before proceeding to answer a

question; (H) that the witness should answer all questions verbally; and (I) that substances such as food, beverages, and chewing gum should not be brought into the courtroom.

The attorney also must advise the witness of proper dress for the courtroom. Proper dress does not include blue jeans, shorts, overalls, T-shirts, collarless shirts, shirts with printed words or phrases on the front or back, tank tops, or the like.

IT IS SO ORDERED.

DATED this ____ day of _____, 20____.

**PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

(PLAINTIFF’S) (DEFENDANT’S) EXHIBIT LIST [Form]

The following categories have been used for objections to exhibits:

- A. **Category A.** These exhibits already will be in evidence at the commencement of the trial, and will be available for use by any party at any stage of the proceedings without further offer, proof, or objection.
- B. **Category B.** These exhibits are objected to on grounds **other than** foundation, identification, or authenticity. This category has been used for objections such as hearsay or relevance.
- C. **Category C.** These exhibits are objected to on grounds of foundation, identification, or authenticity. This category **has not** been used for other grounds, such as hearsay or relevance.

(Plaintiff’s)(Defendant’s) Exhibits	Objections [Cite Fed. R. Evid.]	Category A, B, C	Offered	Admit/Not Admitted (A) - (NA)
1. <i>[describe exhibit]</i>				*
2. <i>[describe exhibit]</i>				
3. <i>[describe exhibit]</i>				
4. <i>[describe exhibit]</i>				
5. <i>[describe exhibit]</i>				

*[*This column is for use by the trial judge at trial. Nothing should be entered in this column by the parties.]*